

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5328 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MENKA CO OP HOUSING SOC. LTD

Versus

DY.DDO

Appearance:

MR RS SANJANWALA for Petitioner

MR TH SOMPURA, AGP for Respondent No. 1, 3, 4

MR UA TRIVEDI for Respondent No. 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 24/02/97

ORAL JUDGEMENT

Annexure.C dated June 21, 1988 are the orders cancelling the NA permission granted in favour of the petitioner . These orders at Annexure.C follow the show cause notice dated November 18, 1987. It was brought to the notice of the petitioner that, the construction was

not commenced within the stipulated period and, therefore, there was the breach of condition no.7 of the orders granting the NA permission. The DDO, Gandhinagar, after hearing the parties, was pleased to come to the conclusion that the NA permission granted in favour of the petitioner-Society requires to be cancelled. These orders at Annexure.C were taken in appeal, of course, unsuccessfully, before the Additional Chief Secretary, Revenue Department, State of Gujarat, by filing the requisite appeal. This appeal came to be dismissed by the orders dated 4/7th October 1988, available at Annexure.D. These orders are in challenge in the present petition, before me.

Learned Counsel Mr.R.S.Sanjanwala who appears on behalf of the petitioner-society urges that the sequence of events is required to be taken into consideration and that the same would explain the fact situation in which the petitioner-society was placed. It is not in dispute that, the petitioner-society had applied for NA permission in the year 1982. This permission came to be granted vide orders dated February 10, 1982. Any how, these orders came to be amended under the orders dated May 28, 1982 and the land of block no.837 was also included in the land in question and, therefore, the NA permission also came to be given qua the said land. The important aspect of the matter is that, on September 4, 1987, there was an agreement between the ONGC on one hand, and the Government on the other, for acquisition of the lands of the petitioner. On June 21, 1988, the respondent no.2 had cancelled the NA permission granted in favour of the petitioner on the ground that the construction has not been commenced and completed within the stipulated time frame. As indicated above, there are the orders adverse to the petitioner-society, at Annexures.C and D.

Learned Counsel Mr.Sanjanwala while pointing out the important aspect of the matter urges that, there was an agreement between the ONGC and the Government for acquisition of the lands of the petitioner and that, the notification under Section 4(1) of the Land Acquisition Act, 1894, acquiring the lands of the petitioner for ONGC was issued on January 3, 1990. The notification under Section 6 of the Act came to be issued on June 23, 1990. It appears that the petitioner-society was required to file Special Civil Application No. 4630 of 1992 before this Court. The said proceedings came to be disposed of, by a Bench pronouncement of this Court on the basis of the say of the learned Assistant Govt. Pleader, duly supported by the record that, the land belonging to the

petitioner-society were released from the acquisition under Section 48(1) of the Land Acquisition Act, 1894.

Thus, it appears that, for a long time, the agreement between the ONGC on one hand, and the Government on the other, was in subsistence and later on, the requisite notifications under the Land Acquisition Act were also published. It is true that, later on, these acquisition proceedings have been dropped and the lands of the petitioner have been released from the acquisition process, but it appears that, there could be the difficulty on the part of the petitioner-society, to commence and complete the construction within the stipulated time frame because of the above said development.

So far as the legal aspect of the matter is concerned, the learned Counsel for the petitioner places reliance upon an unreported decision of this Court in Special Civil Application No. 871 of 1989 decided on October 5, 1995. There was a similar question involved, but of course, on the background of the different facts. The learned Single of this Court, who had decided the above said proceedings was pleased to come to the conclusion that the cancellation of the NA permission is considered to be the most drastic action to be taken and that this most drastic action had only to be taken if the petitioners are found deliberately and wantonly guilty of non-complying with the relevant condition of the NA permission.

Thus, it has been accepted that the cancellation of the NA permission is an extreme step which should be taken only after addressing oneself regarding the adversability of inflicting less serious punishment.

In my view, though the facts are slightly different, the above said principle laid down by the learned Single Judge in the said proceedings applies to the facts of the case and that drawing a parity from the above said decision, the present petition also requires to be allowed.

As has been done by the learned Single Judge in the said proceedings, a time frame shall have to be given and the petitioner should be called upon to pay the requisite penalty.

In my opinion, the ends of justice would meet if the petitioner-society is ordered to deposit and pay by Demand Draft, an amount of Rs.1,25,000/(Rupees One Lakh

twentyfive thousand only) before the Secretary, Revenue Department, State of Gujarat, within a period of six weeks hereof. The petitioner-society shall have to commence and complete the construction within a period of three years hereof.

The petition succeeds to the above said extent and it is hereby accordingly granted. Rule is made absolute accordingly, with no order as to costs.
